

My review under the Act is limited to a determination as to whether there is substantial evidence to support the Commissioner's final decision. If substantial evidence exists, this court's "inquiry must terminate," and the final decision of the

Commissioner must be affirmed. *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). Substantial evidence has been defined as “evidence which a reasoning mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance.” *Id.*

Balthis applied for benefits on July 3, 1996, alleging disability since June 21, 1996, and received a hearing before an administrative law judge (“ALJ”) on August 5, 1997. By decision dated January 15, 1998, the ALJ found that the plaintiff was not disabled within the meaning of the Act. The Social Security Administration’s Appeals Council denied review, and the ALJ’s opinion constitutes the final decision of the Commissioner.

The parties have briefed the issues, and the case is ripe for decision.

## *II. Facts.*

Balthis was fifty-six years old at the time of his hearing before the ALJ, a younger individual under the regulations. He has past relevant work experience as a roof bolter and shuttle car operator in coal mines. He claims disability based on heart by-pass, ruptured disk, arthritis of the spine and knees, and hearing loss.

The ALJ considered medical evidence from Christopher J. Kennedy, M.D., Charles P. Maine, M.D., J. Dale Sargent, M.D., S.C. Kotay, M.D., Jack K. Cox, II,

M.D., Jeffrey P. Robbins, M.D., Roger D. Neal, M.D., Shiv Navani, M.D., Joseph F. Smiddy, M.D., Anilkumar Joshi, M.D., Norton Community Hospital, and the Bristol Regional Medical Center.

Balthis underwent heart by-pass surgery on January 30, 1995. (R. at 125.) The surgery was an apparent success. Follow-up visits with Dr. Kennedy reflect Balthis as “doing quite well with no complications.” (R. at 146.) The plaintiff returned to work in the coal mines. (R. at 372.) Pulmonary function and echocardiogram tests conducted in July 1995 revealed normal cardiopulmonary functioning, with “[n]o anatomical or Doppler evidence of significant valvular heart disease.” (R. at 147-49.) Later in 1995, Balthis reported that he was feeling well. (R. at 164.)

In January 1996, Balthis presented to Norton Community Hospital complaining of chest pain. (R. at 169.) An X ray revealed “[n]o acute cardiopulmonary process” (R. at 173), however, and he was released with a diagnosis of “chest pain, non-specific.” (R. at 172.) After a follow-up examination on February 1, 1996, Dr. Maine noted, “I could define no objective evidence of trouble with his heart.” (R. at 212.) At several subsequent visits to Dr. Maine in 1996, Balthis was “doing well.” (R. at 207, 208, 378, 382.) Pulmonary function tests performed by Dr. Sargent on March 27, 1996 revealed “mild restriction” of the lungs, but Dr. Sargent noted that “it is only a mild impairment and [is] in no way disabling.” (R. at 184.) Dr. Sargent also opined

that the restriction was “more related to his previous cardiac surgery than to pneumoconiosis.” (*Id.*) An exercise test was completed within normal limits. (R. at 185.)

On August 12, 1997, Dr. Maine refused the request of Balthis’ attorney to complete a Residual Physical Functional Capacity Assessment, referring the attorney instead to the plaintiff’s subjective complaints. In another letter dated August 26, 1997, Dr. Maine stated that he had “no specific evidence of disability.” (R. at 390.) In September 1997, Balthis underwent a cardiac catheterization and angioplasty under the care of Dr. Forrest. (R. at 397-404.) He was instructed to avoid heavy lifting or straining for one week to ten days following the procedure. (R. at 406.)

In December 1998, an X ray under the care of Dr. Smiddy revealed coal worker’s pneumoconiosis. (R. at 539-550.) Dr. Smiddy opined that this lung condition alone was disabling. (R. at 549.)

As to the plaintiff’s complaints of back and leg problems, Balthis sought treatment from Dr. Kotay from April 1996 through May 1997.<sup>1</sup> Balthis presented to Dr. Kotay on April 29, 1996 complaining of back pain, but no leg pain. (R. at 267-

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<sup>1</sup> The record also contains evidence of treatment from Dr. Kotay from the late 1980s and early 1990s. (R. at 226-267.) Because the plaintiff claims disability with an onset date of June 21, 1996, however, these records are relevant in providing background information, but not directly relevant to his current claim of disability. Balthis sought no treatment for back problems between the summer of 1992 and April 1996. (R. at 267.)

68.) Dr. Kotay began a treatment regimen of anti-inflammatory medicine and physical therapy. (R. at 268.) In June 1996, Balthis complained of knee pain. (*Id.*) Although “[c]linically the knee looked okay,” an X ray revealed mild arthritis. (R. at 269.) Anti-inflammatory medication was continued. (*Id.*) After the plaintiff’s continued complaints of pain on May 13, 1997, Dr. Kotay recommended arthroscopy, but noted that an X ray showed “only minimal narrowing of the medial joint.” (R. at 270.)

In a letter dated March 12, 1998, Dr. Kotay opined that due to lumbar disc lesion and degenerative arthritis of the knee, Balthis had a “total permanent impairment rating of 15% to the body as a whole.” (R. at 16.) In another letter dated June 8, 1998, Dr. Kotay responded to inquiries by the plaintiff’s attorney by “filling in the blanks” of her letter. (R. at 548.) The attorney’s letter essentially repeated several of the plaintiff’s subjective complaints, and asked Dr. Kotay if each could “be reasonably expected to arise from an objectively documentable condition.” (R. at 548-49.) Dr. Kotay responded by checking the “yes” blank on four of six questions. (*Id.*) No objective documentary medical evidence was attached.

In October 1996, Dr. Cox performed a disability examination of the plaintiff. (R. at 214.) An X ray revealed “mild L4-5 disc space narrowing” (R. at 216), but

Balthis displayed a full range of motion in his back and legs. (R. at 214.) Dr. Cox found no impairments. (*Id.*)

As to the plaintiff's complaint of hearing loss, in January 1999, Dr. Robbins reported Balthis as having a "medically significant high frequency hearing impairment," but recommended a hearing aid to treat the plaintiff's condition. (R. at 537.) In a hearing examination conducted by Dr. Neal, Balthis' ear examination was normal, and he did not have trouble carrying on a conversation. (R. at 526.) Dr. Neal noted some hearing loss related to exposure to loud noise. (R. at 531.)

After reviewing the medical evidence, the ALJ determined that Balthis has the residual functional capacity to perform medium work, and can return to past relevant work. (R. at 28.) Therefore, he concluded, the plaintiff is not disabled. (*Id.*)

### *III. Analysis.*

The plaintiff contends that the decision of the ALJ is not supported by substantial evidence. Specifically, the plaintiff contends that the Appeals Council erred in failing to adequately consider additional medical evidence presented to it following the ALJ's hearing and decision.

When a claimant seeks review by the Appeals Council, the Council first makes a procedural decision to either grant or deny review. If the Appeals Council denies

review, that denial renders final the decision of the ALJ. It is thus the decision of the ALJ, and not the procedural decision of the Appeals Council to deny administrative review, that is subject to judicial review. *See* 20 C.F.R. §§ 404.967-981, 416.1467-1481 (2000).

The Appeals Council must consider evidence submitted to it when it is deciding whether to grant review, “if the additional evidence is (a) new, (b) material, and (c) relates to the period on or before the date of the ALJ’s decision.” *Wilkins v. Secretary, Dept. of Health & Human Servs.*, 953 F.2d 93, 95-96 (4th Cir. 1991) (en banc) (quoting *Williams v. Sullivan*, 905 F.2d 214, 216 (8th Cir. 1990)). Evidence is new if it is not duplicative or cumulative. *See Id.* at 96. Evidence is material “if there is a reasonable possibility that the new evidence would have changed the outcome.” *Id.*

Where the Appeals Council did consider the new evidence, but denied review, the Fourth Circuit has held that the district court should consider the record as a whole, including the new evidence, in order to determine whether the decision of the ALJ is supported by substantial evidence. *See Wilkins*, 953 F.2d at 96.<sup>2</sup> After

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<sup>2</sup> While the Appeals Council must “articulate its own assessment of her additional evidence,” *Browning v. Sullivan*, 958 F.2d 817, 822 (8th Cir. 1992), it need not announce detailed reasons for finding that the evidence did not warrant a change in the ALJ’s decision. *See* 20 C.F.R. § 404.970(b) (1999).

consideration of all of the evidence in the record, I find that the ALJ's decision is supported by substantial evidence.

The ALJ closed the record for receipt of medical evidence thirty days after the hearing held on August 5, 1997. (R. at 38.) As of that date, the medical evidence reflects that Balthis had recovered well from his heart by-pass surgery. At repeated follow-up visits to Dr. Maine, the plaintiff was "doing well with no new complaints." (R. at 207, 208, 378, 382.) In February 1996, Dr. Maine reported, "I could define no objective evidence of trouble with [Balthis'] heart." (R. at 212.) Furthermore, Dr. Sargent's cardiopulmonary examination of the plaintiff in March 1996 revealed "only a mild impairment" that was "in no way disabling." (R. at 184.) In a letter dated August 26, 1997, Dr. Maine stated that he could find "no specific evidence of disability." (R. at 390.)

Medical records from treatment by Dr. Kotay reveal "mild" arthritis and "only minimal narrowing of the medial joint." (R. at 269-70.) Although Dr. Kotay discussed arthroscopy with the plaintiff, he stated that "[c]linically the knee looked okay." (*Id.*) Dr. Cox found that Balthis exhibited the full range of motion and extension in both of his knees and his spine. There was no evidence before the ALJ regarding the plaintiff's hearing.

I find that based on the evidence before him at the time of his decision, the ALJ's determination that the plaintiff was not disabled was supported by substantial evidence. I also find that nothing in the "new" evidence submitted after the ALJ's deadline undermines the ALJ's finding. While it is true that the plaintiff underwent a second catheterization and angioplasty procedure in September 1997, the treating doctor recommended only that the plaintiff avoid heavy lifting and straining for a week to ten days following the procedure. (R. at 406.) Dr. Smiddy's opinion that Balthis demonstrated disabling coal worker's pneumoconiosis (R. at 539), is directly contradicted by the opinion offered by Dr. Sargent that Balthis' complaints were probably not related to pneumoconiosis. (R. at 184.) Furthermore, Dr. Smiddy's opinion that the plaintiff is disabled based on pneumoconiosis alone is contradicted by the rest of the record. Balthis' cardiopulmonary functions were repeatedly within normal limits. (R. at 147, 173, 185, 207.)

Dr. Kotay's letter stating his opinion that the plaintiff has a total permanent body impairment of fifteen percent due to a lumbar disc lesion and arthritis of the knee is neither supported by his own medical records nor those of other physicians. Dr. Kotay previously described Balthis' problems as "mild" and "minimal." (R. at 269-70.) Furthermore, the plaintiff demonstrated the full range of motion in both of his knees and in his spine at his examination by Dr. Cox. (R. at 214.) Thus, the

ALJ's determination that the plaintiff is not disabled continues to be supported by the record as a whole.

As to the plaintiff's evidence of hearing loss, several physicians noted that Balthis has no trouble carrying on a conversation. (R. at 526, 215.) To the extent that the plaintiff may have a high frequency hearing impairment, the condition can be treated with a hearing aid. (R. at 537.) Thus, this recent evidence of some hearing loss does not render the ALJ's decision unsupported.

#### *IV. Conclusion.*

For the foregoing reasons, the Commissioner's motion for summary judgment will be granted.

An appropriate final judgment will be entered.

DATED: February 13, 2001

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United States District Judge